

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

F.T. INTERNATIONAL, LTD. :  
 :  
 v. : CIVIL ACTION  
 :  
 THOMAS E. MASON, MARSHLAND, : NO. 00-5004  
 LTD., and MAIN STREET BANK :  
 also Trading as BERKS COUNTY :  
 BANK and HERITAGE BANK and :  
 SOVEREIGN BANK :

MEMORANDUM ORDER

In a verified complaint filed this afternoon, plaintiff has alleged a conversion of its funds by defendant Marshland and Mason. The complaint was accompanied by a motion for a temporary restraining order pursuant to Fed. R. Civ. P. 65 by which plaintiff seeks to freeze funds held by the defendant banks in accounts of the individual and corporate defendants.

Plaintiff avers that it was fraudulently induced to maintain \$15,000,000 in its account at First Union Bank in Reading by defendant Marshland, through its CEO and shareholder, defendant Mason, who represented that these funds would remain on deposit at First Union while generating a substantial return in connection with a \$500,000,000 investment program. Plaintiff avers that Marshland, through defendant Mason, effected the transfer of the \$15,000,000 from plaintiff's account at First Union to accounts in their names at various banks by use of a falsified corporate resolution purportedly adopted by plaintiff. Plaintiff avers that it has made a demand of defendant Mason for

return of these funds and he has refused. Plaintiff avers that defendant Mason has now transferred \$5,000,000 of these funds to an offshore bank and \$2,500,000 to accounts at Berks County Bank in the names of Marshland and Mason. Plaintiff avers that those defendants have been transferring these funds between their accounts at Berks County Bank and accounts in their names at Sovereign Bank. Plaintiff avers that Mr. Mason has engaged in similar conduct with regard to the bank account of a South Carolina investor.

Plaintiff seeks an order freezing all accounts and deposits at the defendant banks in the name of defendant Marshland or defendant Mason and restraining these defendants from withdrawing any funds on deposit with the defendant banks.<sup>1</sup> Plaintiff also seeks an order requiring these defendants to render an accounting of all of the funds transferred from First Union.

There is complete diversity of citizenship among the parties and the amount in controversy exceeds \$75,000.

A federal court has no authority generally to freeze a defendant's funds to help ensure satisfaction of a judgment

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<sup>1</sup>Plaintiff has presented its request for a TRO ex parte. Plaintiff has not specifically articulated a reason why an order should be entered ex parte. The court infers from the averments in the complaint that plaintiff reasonably fears that with advance notification, Mr. Mason would alienate or secrete the funds before a hearing could be held.

should the plaintiff prevail on an underlying legal claim. See Grupo Mexicano de Desarrollo v. Alliance Bond Fund, Inc., 119 S. Ct. 1961, 1975 (1999). A court also has no authority in any event to freeze assets in an amount which exceeds that recoverable in the underlying action. See Hoxworth v. Blinder, Robinson & Co., Inc., 903 F.2d 186, 198-99 (3d Cir. 1990).

Aside from the traditional showing necessary to obtain preliminary injunctive relief, a plaintiff may obtain a prejudgment freeze on a defendant's assets only if he has asserted a cognizable equitable claim, has demonstrated a sufficient nexus between that claim and specific assets of the defendant which are the target of the injunctive relief, and has shown that the requested interim relief is a reasonable measure to preserve the status quo in aid of the ultimate equitable relief claimed. See U.S. ex rel. Rahmam v. Oncology Associates, P.C., 198 F.3d 489, 496-97 (4th Cir. 1999). See also Travelers Casualty & Surety Co. v. Beck Development Corp., 95 F. Supp. 2d 549, 552-53 (E.D. Va. 2000); III Finance Ltd. v. The Aegis Consumer Funding Group, Inc., 1999 WL 4619808, \*4 n.1 (S.D.N.Y. July 2, 1999).

On the facts as averred, plaintiff would likely prevail on a claim for conversion or fraud. The diversion and transfer abroad of millions of dollars by defendants suggests that plaintiff will be unable to recoup any of its funds without

prompt injunctive action. This is sufficient to show irreparable harm. This harm is substantially greater than the harm to defendants from the entry of a restraining order which essentially would consist of loss of the use of the frozen funds for a short period until the parties could be heard on whether a preliminary injunction should issue.<sup>2</sup> On the facts as averred, the public interest would not be affected adversely in any way. Also, the frustration of fraud or conversion, even that affecting only private entities, is in the general public interest.

The TRO requested by plaintiff could result in a freeze of assets exceeding \$2,500,000 or even \$15,000,000. Nevertheless, a TRO could be tailored to address this deficiency. The freeze could be limited to funds in a specified amount or the freeze could be automatically dissolved upon defendants escrow of \$2,500,000.<sup>3</sup>

Plaintiff, however, has not pled a cognizable equitable claim. Plaintiff has alleged the elements of fraud and has alleged that "Mason and Marshland have converted plaintiff's funds." Fraud and conversion are legal, not equitable, claims.

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<sup>2</sup>Plaintiff has actually filed no motion for a preliminary injunction, but has asked for such an order in the prayer for relief in its complaint.

<sup>3</sup>A TRO generally cannot issue without the posting of an appropriate bond. Plaintiff has not addressed this requirement and has made no provision for the posting of a bond. See Fed. R. Civ. P. 65(c).

The only claim expressly pled is captioned "Claim for Return of Funds." A return of funds, however, is a remedy and not a claim. Plaintiff may be able to assert a cognizable equitable claim. The court, however, cannot redraft a party's pleadings and has no authority to enter the requested TRO in the absence of an articulated cognizable equitable claim.

**ACCORDINGLY**, this                    day of October, 2000, upon consideration of plaintiff's Motion for Temporary Restraining Order (Doc. #3), consistent with the foregoing, **IT IS HEREBY ORDERED** that said Motion is **DENIED** without prejudice.

**BY THE COURT:**

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**JAY C. WALDMAN, J.**